

Information regarding sales tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010. (This is a GIL.)

June 12, 2013

Dear:

This letter is in response to your letter dated April 30, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a STATE based lessor that leases medical equipment mainly to veterinarians, doctors and dentists. The lessees are located in IL. We do two types of transactions.

The first type of contract will have monthly rental payments and have a bargain purchase option of \$1 at the end of the lease term.

The second type of contract will have monthly rental payments and have a Fair Market Value residual, and the lessee will have the option of buying the equipment at the end of the lease term or returning the equipment.

There are separately stated charges that may also appear on our invoices to our customers. They relate to Insurance, Late Charges, Maintenance and Property Tax charges. The maintenance charges are optional to the customer.

Our question relates to the payment of sales tax. Which of the separately stated charges would be considered taxable? Can you please address each of the charges listed above separately?

DEPARTMENT'S RESPONSE:

For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All

receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

In contrast, a true lease generally has no buy out provision at the close of the lease. If a buyout provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

If the contract involved is a true lease, the lessee is not subject to Retailers' Occupation Tax or Use Tax on the lease of a vehicle for more than one year. As a result, the lessee is not subject to sales tax liability for any related lease charges such as insurance, late charges, vehicle disposal fees, excess wear and tear fees, excessive mileage fees, service fees, and maintenance.

If the transaction is a conditional sale, please see 86 Ill. Adm. Code 130.420 and 130.410, the Department's rules regarding finance charges, penalties, discounts, and costs of doing business.

Generally, the tax exempt status of lessees does not affect the tax liability of lessors. However, please note that Illinois does have an exemption for certain purchases of tangible personal property by persons who are leasing that property to exempt hospitals that have been issued an E-number by the Department. See the Department's regulation at 86 Ill. Adm. Code 130.2011. This exemption applies to sales of two different types of tangible personal property. The first is computers and communications equipment utilized for any hospital purpose. The second is sales of equipment that are used in the diagnosis, analysis, or treatment of hospital patients.

To qualify for this exemption:

- (1) the qualifying equipment must all be purchased for lease to a tax exempt hospital under a lease that has been executed or is in effect at the time of purchase;
- (2) the lease must be for a period of one year or longer; and
- (3) the lease must be to a hospital that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act.

The rule does not preclude a lessor from claiming the exemption where the lessor leases the qualifying equipment to a lessee who subleases it to a hospital, as long as all the relevant leases have been executed or are in effect at the time of the purchase and all other criteria in Section 130.2011 have been met. 86 Ill. Adm. Code 130.2011.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

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Very truly yours,

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